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CASES CITED.

STATUTES CITED.

In the Supreme Court of the United States

OCTOBER TERM, 1922.

THOMAS F. E. RYAN, APPELLANT,
v.
THE UNITED STATES.
No. 64.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT.

The plaintiff, Thomas F. E. Ryan, is employed as an inspector in the customs service at the port of New York, and has been so employed since his appointment as such became effective on April 16, 1910. Prior to his appointment as inspector he was employed as a clerk in the customs service at the port of New York. On April 9, 1910, he was appointed by the Secretary of the Treasury an inspector, class 2, at $4 per diem, to take effect upon execution of the oath of office. Mr. Ryan executed his oath as inspector, class 2, on April 16, 1910, and his appointment became effective from and after that date. (R. 7, F. II.)

On October 9, 1919, appellant was promoted to inspector, class 4, at $5 per diem, effective from date of execution of oath. Appellant's oath was executed and the appointment became effective October 10, 1919. (R. 7, F. II.)

From April 16, 1910, the date when his original appointment became effective, to October 10, 1919, the date when his promotion became effective, appellant was paid at the rate of $4 per diem. Aside from the additional compensation paid in pursuance of the provisions of the act of February 13, 1919, for overtime, appellant received at no time during said period more than $4 per diem. (R. 7, F. III.)

The appellant contends that he should have been appointed on April 16, 1910, at $5 per diem and that he should have received $5 per diem during the entire period from April 16, 1910, to October 10, 1919.

A petition was accordingly filed in the Court of Claims on April 13, 1916, which was subsequently amended and the amended petition filed November 12, 1920, claiming the difference between $4 per diem and $5 per diem from April 16, 1910, to and including October 10, 1919, an aggregate sum of $3,465. (R. 1–5.)

At no time during appellant's employment as an inspector, class 2, at $4 per diem, and prior to filing his suit in the Court of Claims, did appellant make any objection to or protest against the amount paid him as compensation, nor did he make any demand for any other or greater compensation than that paid him. (R. 11–12, F. XII.)

The Court of Claims found that the plaintiff was not entitled to recover any part of the amount claimed and that the petition should be dismissed. (R. 12.) An order dismissing the petition was entered on February 21, 1921. (R. 22.) From the judgment of the Court of Claims appellant appeals to this court.

The importance of this case is not measured alone by the amount involved in plaintiff's petition. There are a large number of similar cases dependent upon the decision in this case. Between the date of appellant's appointment on April 16, 1910, and June 30, 1910, some 25 inspectors of customs at the port of New York were appointed in class 2, at $4 per diem. (R. 9, F. VI.) The reorganization of the Customs Service was effected by the Secretary of the Treasury July 1, 1910. This reorganization provided for the appointment of inspectors, class 2, at $4 per diem, and pursuant thereto 74 inspectors were appointed in this class at that compensation. (R. 10, F. VI.) The appointment of appellant and others appointed prior to July 1, 1910, marked their entrance into the service as inspectors, class 2, and they were not reappointed under the reorganization but remained in the position to which appointed as inspectors, class 2, under their original appointments. (R. 10, F. VI.)

ARGUMENT.

I.

The minimum compensation to be paid to customs inspectors, class 2, was within the discretion of the Secretary of the Treasury.

But one question is involved in the determination of this appeal, namely, whether at the time of appellant's appointment in the Customs Service as an inspector, class 2, at $4 per diem, the law then in force fixed a compensation of $5 per diem for such position. If a minimum salary of $5 was provided by law for inspectors, class 2, at the time of appellant's appointment, then it must be conceded that he is entitled to that compensation. (*United States* v. *Andrews*, 240 U. S. 90; *Glavey* v. *United States*, 182 U. S. 595.) If no such minimum salary was fixed by statute, then it must be conceded that appellant's case falls to the ground; for his whole case rests on that one point.

All laws prior to the enactment of the Revised Statutes of 1878 relative to salaries of inspectors fixed only the maximum salary which might be paid them and left the minimum compensation to the discretion of the Secretary of the Treasury. Such laws were a limitation on the power of the Secretary of the Treasury rather than a statutory fixing of the salaries of inspectors.

The first statute to *fix* the compensation of inspectors in the customs service is section 2733 of the Revised Statutes, which fixed the salary of inspectors

at $3 per diem, followed by section 2737, Revised Statutes, which authorized the Secretary of the Treasury to increase such compensation by the addition of $1 per day when he considered it advisable so to do. Sections 2733 and 2737, Revised Statutes, follow:

> SEC. 2733. Each inspector shall receive, for every day he shall be actually employed in aid of the customs, three dollars; * * *.
>
> SEC. 2737. The Secretary of the Treasury may increase the compensation of inspectors of customs in such ports as he may think it advisable so to do, and may designate, by adding to the present compensation of such officers, a sum not exceeding one dollar per day.

The above quoted statutes are plain and free from ambiguities. They are related statutes and therefore must be read together. When so read, they can be construed to mean but one thing, namely, that an inspector's compensation was fixed at $3 per diem for such days as the inspector might be called upon by the collector to render service, with discretionary power in the Secretary of the Treasury to increase the regular statutory compensation by the addition of $1 per day. However, the basic salary, and in this case the minimum salary, was fixed at $3 per day. Unless the Secretary of the Treasury chose to exercise the discretionary power granted him, the statutory salary was to be $3 per day. This is the *first and only instance of a fixed minimum salary for inspectors to be found in the statutes.*

However, Congress deemed it advisable to restore the Secretary's discretionary power in reference to the minimum salary to be paid inspectors, and section 2733 of the Revised Statutes was accordingly repealed, in so far as it fixed the minimum salary of inspectors, by a provision in the deficiency appropriation act of March 3, 1881 (c. 132, 21 Stat. 414, 429), which reads:

> *Provided*, That hereafter the Secretary of the Treasury may appoint inspectors of customs at a compensation less than three dollars per day when, in his judgment, the public service will permit.

This provision restored to the Secretary of the Treasury his discretionary power over the minimum salary to be paid inspectors, which he possessed prior to the enactment of section 2733 of the Revised Statutes, but left the maximum salary at $3 per day with an addition of $1 at the discretion of the Secretary, thereby allowing a maximum salary of $4 per diem, and a minimum salary at the discretion of the Secretary.

Even if the Secretary of the Treasury may have increased all inspectors at the port of New York City from $3 per diem to $4 per diem, by granting the additional $1 per day authorized by section 2737, Revised Statutes, the provision of the act of 1881, above quoted, specifically authorizes him to appoint inspectors at less than the maximum salary already being paid to other inspectors employed at that port.

The authority given the Secretary of the Treasury to fix the minimum entrance salary for inspectors has never been taken away.

The law remained, as above stated, until the enactment of the act of December 16, 1902 (c. 2, 32 Stat. 753), entitled "An act regulating the duties and fixing the compensation of customs inspectors at the port of New York." That act provided:

> That the Secretary of the Treasury is hereby *authorized* to increase the compensation of inspectors of customs at the port of New York *as he may think advisable and proper*, by adding to their present compensation a sum not exceeding one dollar per day, which *additional* compensation shall be for work now performed by them at *unusual* hours, for which *no compensation is now allowed*, and shall include work performed by said inspectors at night in examining passengers' baggage, and also as reimbursement for expenses incurred by them for meals and transportation while in the discharge or performance of their official duties. (Italics supplied.)

The above quoted statute is permissive in form. It permits the Secretary to increase the compensation of those inspectors who perform extra work and who render such exceptional service as to warrant the Secretary in granting the extra compensation. The very terms of the statute itself shows the purpose of the act; that the extra compensation granted is to pay for the extra service rendered and to cover the expenses incurred by the inspectors who are compelled to work overtime. This additional compensation was to be

granted only in the discretion of the Secretary of the Treasury, "as he may think advisable and proper."

The act of 1902, *supra*, taken in connection with section 2737, Revised Statutes, authorizes a maximum compensation of $5 per day. The minimum compensation at which the Secretary may appoint inspectors was left unchanged.

The Court of Claims found that the Secretary of the Treasury on January 5, 1903, by an official order, promoted all inspectors of class 2, $4 per diem, at the port of New York, to inspectors, class 4, $5 per diem. (R. 8, F. V.) The court also found that immediately prior to appellant's appointment as an inspector, class 2, at $4 per diem, and continuously since the order of January 5, 1903, with the exception of a period of three months, all inspectors of customs at the port of New York received $5 per diem. (R. 9, F. VI.)

While it is clear, therefore, that at the time of appellant's appointment as an inspector, class 2, at $4 per diem, all other inspectors already employed at the port of New York were receiving $5 per diem as inspectors, class 4, it does not necessarily follow that appellant's appointment as an inspector entitled him to the same compensation then being paid to more experienced employees. The Secretary's discretionary power over the minimum entrance salary of inspectors had not been taken from him, nor in any way modified by the act of 1902.

The next statute material to our inquiry is that of the act approved March 4, 1909 (c. 314, 35 Stat.

1065) entitled "an act fixing the compensation of certain officials of the customs service." That act, so far as it relates to the compensation of customs inspectors, provides:

> SEC. 2. That the Secretary of the Treasury be, and he is hereby, authorized to increase and fix the compensation of inspectors of customs, *as he may think advisable*, not to exceed in any case the rate of six dollars per diem, and in all cases where the maximum compensation is paid no allowance shall be made for meals or other expenses incurred by inspectors when required to work at unusual hours.
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> * * * * *
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> SEC. 8. That all laws and parts of laws inconsistent with this act are hereby repealed. (Italics supplied.)

The act of March 4, 1909, *supra*, is not mandatory and does not compel the Secretary of the Treasury to employ inspectors at $6 per day, the maximum compensation authorized therein, nor at $5 per diem, the compensation to which appellant claims he is entitled. The act of 1909, like the act of 1902, *supra*, does not attempt to fix a minimum compensation, nor does it fix any per diem compensation which *must* be paid to inspectors employed at the port of New York. It does authorize the Secretary of the Treasury to increase the compensation of inspectors "as he may think advisable," limited, however, to $6 per diem. It gives to the Secretary discretionary power to "fix" the compensation. When the Secre-

tary has exercised that authority and *fixed* the compensation of certain inspectors, whether at $4, $5, or $6 per diem, the compensation of such inspectors has become *fixed*, and in effect has become statutory. This is the substance of the decision of this court in the case of *Cochnower* v. *United States*, 248 U. S. 405.

There is nothing in the act of 1909, *supra*, nor in the decision of this court in the *Cochnower case* which takes away the discretionary power theretofore lodged in the Secretary of the Treasury over the minimum compensation to be paid to an inspector at the time of his appointment.

Had the Secretary of the Treasury, pursuant to the act of 1909, issued an order that all inspectors of class 2 should be paid $5 per diem, thereby fixing the compensation of that class, and subsequently had appointed appellant an inspector, class 2, appellant might have some ground on which to base his claim. The Secretary, however, did nothing of that kind. On the contrary, he prepared to exercise the discretionary powers granted by this statute by effecting a reorganization of the inspection force at the port of New York by which some inspectors were to be paid at the rate of $6 per day, while others were to receive less compensation. The reorganization plan was formulated but did not become effective until July 1, 1910, some two and a half months subsequent to the appointment of appellant. The appointment of Ryan and others in April, 1910, as inspectors, class 2, at $4 per diem, marked their entrance into

the service in that class, and they were not reappointed under the reorganization as inspectors of class 2, but remained under their original appointments. (R. 10, F. VI.)

In the *Cochnower case*, an attempt was made to reduce Inspector Cochnower from $5 per diem, the compensation which he had been receiving, to $4 per diem, as an inspector, class 2. This court held that while the act of 1909, authorized the Secretary to "increase and fix" the compensation of inspectors, it did not authorize him to *decrease* their compensation where their class and compensation had theretofore been established.

It is apparent, therefore, that the act of 1909 in force at the time of appellant's appointment did not fix a minimum salary to be paid inspectors upon their entrance into the service. Neither did the act of 1902, as has heretofore been shown, limit the discretion of the Secretary in regard to minimum salaries to be paid inspectors at the time of their appointment.

Appellant was employed as an inspector, class 2, at $4 per diem. No inspector of class 2 has ever received more than $4 per diem at the port of New York. When, under the authority of the act of 1902, inspectors were advanced to $5 per diem, by paying to them the additional $1 per diem authorized by that act, they were promoted to inspectors, class 4, and as such inspectors of class 4 paid $5 per diem.

Appellant was not appointed an inspector, class 4, until October 10, 1919, and when so appointed

he received the compensation of $5 per day designated for that class. The act of 1909 operated only upon those inspectors already in the service and authorized the Secretary to "increase and fix" their salaries. There is nothing in that statute relating to the minimum salary to be paid inspectors upon appointment, or fixing a rigid compensation for inspectors of any class. There is nothing in that act, therefore, to sustain appellant's theory that the salary or compensation of inspectors of class 2 was fixed at $5 per diem.

Neither does the act of 1902 attempt to classify inspectors by grades and fix the salaries to be paid for each grade. Even though other inspectors, already in the service at the time of appellant's appointment, were receiving $5 per day, because of the designation of the Secretary of the Treasury pursuant to the act of 1909, appellant would not be entitled to such increased compensation until so designated by the Secretary.

Appellant's claim for compensation at $5 per diem instead of $4 per diem rests on the mere fact that some other inspectors were being paid $5 per diem and that, therefore, appellant should have the same compensation. If this ridiculous claim should be allowed on the theory set forth, the same theory would be advanced by employees of other branches of the Government service. A large number of employees throughout the Government service would no doubt make claims for increased compensation based upon the same unsound, unjust, and inequitable

ground that is now advanced by appellant, namely, that they should receive the same compensation as that allowed to the highest paid employees performing a similar kind of work, regardless of length of service, experience, or efficiency.

Had the Congress intended to take away from the Secretary of the Treasury the power to fix the compensation to be paid inspectors upon their appointment in the service it would undoubtedly have said so in plain and unmistakable language.

All of the acts heretofore referred to, including sections 2733 and 2737, Revised Statutes, were superseded by the act of August 24, 1912 (c. 355, section 1, 37 Stat. 434), by which the President was authorized to reorganize the Customs Service. (6 Comp. St. 1916, p. 6585.) As authorized by the act of 1912, the President submitted his plan of reorganization in a message to Congress, dated March 3, 1913, and the same became effective July 1, 1913. (6 Comp. St. 1916, p. 6513.)

In the estimate accompanying the message, and which was adopted and appropriations made in accordance therewith for the fiscal year ending June 30, 1914, there will be found the following numbers of inspectors employed at the port of New York, together with their estimated compensations, namely:

90 inspectors, at $6.00 per day.
6 inspectors, at $5.50 per day.
216 inspectors, at $5.00 per day.
113 inspectors, at $4.00 per day.
4 inspectors, at $3.00 per day.

The foregoing is instructive, although not necessarily material to the question to be decided, in that it shows that 113 inspectors were then being employed or were intended to be employed at $4 per diem, while 4 inspectors were employed or intended to be employed at $3 per diem. The Court of Claims found (R. 10, F. VII) that the organization of the Customs Service effected pursuant to the act of March 4, 1909, was continued after the reorganization of the Customs Service by the President under authority of the act of August 24, 1912, *supra*.

It can be safely assumed, therefore, that all of the inspectors named in the estimate attached to the President's plan of reorganization were then employed at the salaries named in the estimate. That being true, the estimate can be taken at least as a part of the plan of reorganization, and was in fact the basis upon which the inspectors were to be paid for the fiscal year ending June 30, 1914. It shows also the interpretation put upon previous acts by the Secretary of the Treasury as to his authority to employ inspectors at less than the maximum salaries authorized by the acts of December 16, 1902, and March 4, 1909, *supra*.

Appellant lays great stress upon the language used in the deficiency appropriation acts of June 30, 1906 (34 Stat. 636), and March 4, 1907 (34 Stat. 1343), as defining the legal compensation to be paid to inspectors of customs.

As a matter of fact the language used in those statutes have no bearing upon the question before this court. The facts which made necessary the deficiency appropriations referred to are that certain inspectors at the port of New York were being paid at the rate of $5 per diem as inspectors, class 4. They had been so designated and paid prior to October, 1905. The Secretary of the Treasury ordered these inspectors, class 4, reduced to inspectors, class 2, at $4 per diem, and they were reduced and paid accordingly for the months of October, November, and December, 1905. On January 8, 1906, the Secretary ordered that these same inspectors of class 2, be restored to inspectors, class 4, at $5 per diem. (R. 8, F. V.) There were 331 inspectors, class 4, reduced to class 2, and the same 331 inspectors, class 2, were restored to class 4.

Subsequently the Congress, by the deficiency acts of June 30, 1906 and March 4, 1907, *supra*, appropriated the difference between $4 per diem and $5 per diem for the months of October, November, and December, 1905. The deficiency acts referred to read as follows:

> To pay the inspectors of customs of the port of New York the difference between the per diem salary of four dollars paid them during the months of October, November, and December, 1905, and their proper per diem salary for the same period (five dollars per diem) in accordance with the act of Congress approved December 16, 1902, thirty-

one thousand dollars or so much thereof as may be necessary. (Act June 30, 1906.)

To enable the Secretary of the Treasury to pay to certain inspectors of customs of the port of New York the difference between the per diem salary of four dollars paid them during the months of October, November, and December, 1905, and their proper per diem salary of five dollars for the same period, nine hundred forty dollars. (Act March 4, 1907.)

Appellant attempts to construe the words "their proper per diem salary for the same period (five dollars per diem) in accordance with the act of Congress, approved December 16, 1902" as a legislative interpretation of the act of 1902, and as fixing a minimum salary for inspectors of customs. The language will bear no such construction. The 331 inspectors referred to had theretofore been designated inspectors, class 4, at $5 per diem. The reduction in pay and consequent reduction in classification may have been unwarranted. Congress, believing that the inspectors should receive the difference between the former compensation and the reduced compensation appropriated an amount sufficient to pay such difference. In doing so it described the appropriation in the language above used, not as being the legal minimum salary, but as being the compensation which the 331 individual inspectors should have received for the period mentioned.

The Court of Claims in its opinion in this case referred to the reduction and subsequent restoration of the 331 inspectors and the deficiency appropriation acts to pay the difference in compensation as follows (R. 19):

> From some standpoint not shown the Secretary evidently concluded that he ought to adjust pay for this period on a $5 per diem basis. As shown by official records he feared that if he made these payments from the current appropriation he would create a deficiency therein, and he thought it better to ask a deficiency appropriation for the purpose. If outside of the record, it does not do violence to our general, if not judicial, knowledge of such matters to assume that a provision in a deficiency bill appropriating a considerable sum of money to be paid to certain employees would not have gotten very far if upon its face it might not controvert the idea of a gratuity. Some reason must be given of what importance was phraseology when money was wanted. But further discussion is not justified. *We can not conclude that a plain, unambiguous act can be thus changed in its whole import by an assumed legislative construction for which there is no foundation.* (Italics supplied.)

It is submitted that the explanation given by the Court of Claims in reference to the above acts is the only correct and reasonable one.

The decision of this court in *Cochnower* v. *United States* (248 U. S. 405), can not be said to be authority

against the Secretary of the Treasury to fix the per diem compensation of inspectors at the time of appointment, nor that he can not employ an inspector, class 2, at $4 per diem, even though he may at that time have in his employ other inspectors of class 4, at $5 per diem. In that case this court, citing the act of March 4, 1909, *supra*, said, (pp. 407–408):

> Reverting then to the statute, we discover that it was at pains to express clearly the power to "increase." If it had been intended to give the power to "decrease"—an accurately opposite power—it would have been at equal pains to have explicitly declared it; and thus the unlimited discretion in the Secretary contended for by the Government would have been simply and directly conferred and not left to be guessed from a circumlocution of words or to be picked out of a questionable ambiguity.
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> * * * * *
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> It is, however, urged that the act implies minimum and maximum salaries, especially of inspectors, and also the power of classification of inspectors. We are not called upon to dispute it. The fact or the power does not enlarge the authority to increase salaries into an authority to decrease them. The power given can otherwise be accommodated.

In that case this court took under consideration only the question of the right of the Secretary, under the provisions of the act of March 4, 1909, *supra*, to reduce Cochnower from inspector, class 4,

to inspector, class 2, with a consequent reduction in pay from $5 per day to $4 per day. The Government based its case on the language of the act of 1909, and this court held that the act gave the Secretary no authority to decrease the compensation of those inspectors whose per diem compensation had theretofore been designated by the Secretary of the Treasury.

But Cochnower also claimed that the statute fixed the compensation of inspectors at $6 per diem and that under the provisions of that statute he should have been increased from $5 to $6 per diem. He accordingly included in his petition filed in the Court of Claims a claim not only for the difference between the compensation of $5 per diem, which he had theretofore received and the reduced compensation of $4 per diem, but also between the pay at $5 per diem and the maximum compensation of $6 per diem, which he asserted he should have received under the provisions of the act of 1909. This latter claim was not allowed by this court. As was well stated by the Court of Claims in its opinion in this case (R. 16):

> The situation is sufficiently met under the theory of that case when it is said that the act being permissive in its character authorized the Secretary of the Treasury in his discretion to increase salaries of inspectors to $5 per diem, and when he had, as in the Cochnower case, exercised that discretion, Cochnower's salary then became fixed at $5 per diem by virtue not alone of the statute but by virtue of the

> exercise by the Secretary of the Treasury of the authority conferred upon him by the statute.

But appellant had never, during the time for which he claims additional compensation, been appointed an inspector, class 4, nor had the Secretary of the Treasury exercised his discretionary powers as to him and designated the compensation to be received by appellant other than $4 per day. Again quoting from the opinion of the Court of Claims in this case:

> To hold that from the time of his appointment in April, 1910, he was entitled to receive $5 per diem compensation is to hold that he was then appointed an inspector, class 4, to which he was ineligible, and if he had been so appointed his appointment under the civil-service act would have been invalid. (R. 21.)

In the *Cochnower case* the Secretary's discretionary powers over the compensation to be paid inspectors at the time of their original appointments was not considered. No consideration was given to the act of December 16, 1902, *supra*, nor to the specific authority granted the Secretary by the act of March 3, 1881, *supra*. In the latter act the Secretary was authorized to "appoint inspectors of customs at a compensation of less than $3 per day." *That act was not repealed by either the act of 1902 or the act of 1909.*

All three of the acts above referred to were repealed by the act of August 24, 1912 (c. 355, sec. 1, 37 Stat. 434; (Comp. St. sec. 5327), and the message

of the President to Congress, dated March 3, 1913, submitted in accordance with the provision of said act. In the message referred to there was set out a plan of reorganization of the Customs Service, which was put into effect on July 1, 1913 (6 Comp. St. 1916, p. 6513, et seq.).

Even if it should be held by this court that appellant is entitled to the difference between $4 per day which he received and the $5 per day which he claims, the additional compensation can not be allowed him subsequent to June 30, 1913, when the reorganization of the Customs Service, authorized by the act of 1912, became effective, as that act impliedly repealed all former acts. This court so held in the *Cochnower case* by allowing additional compensation to Cochnower only to June 30, 1913, instead of for the full period claimed by him. (*Cochnower* v. *United States*, 249 U. S. 588.)

Appellant attempts to draw a parallel between this case and that of *Adams* v. *United States* (20 Ct. Cls. 115; appellant's brief, p. 21). The two cases are easily distinguishable. Adams was appointed an inspector on May 8, 1874, at $2.50 per diem, although at that time the statutory compensation of inspectors was fixed at $3 per diem. (Sec. 2733, Rev. Stats.)

At the time of Adams's appointment as inspector, the act of March 3, 1881 (21 Stat. 429), permitting the Secretary to employ inspectors at less than $3 per day, had not been passed.

In this case Ryan was appointed an inspector at $4 per diem, subsequent to the enactment of the act of March 3, 1881, *supra*. There was, therefore, no restriction upon the minimum compensation at which the Secretary could employ inspectors. At the time of Ryan's appointment, the compensation of inspectors was not fixed at $5 per day, either by the act of 1902 or by any other act. The Secretary still had discretionary authority over the minimum salary of inspectors given him by the act of 1881, *supra*.

The difference between the two cases is so apparent that it is not deemed necessary to argue the point further.

There can be little doubt but that the Secretary of the Treasury had the right under the law in force at the time of Ryan's appointment as an inspector, class 2, to employ inspectors in the customs service at any compensation which in his discretion he deemed advisable, not to exceed, however, the maximum compensation fixed at $6 per diem by the act of March 4, 1909, *supra*. He not only had the inherent right possessed by every executive head of a Government department, where the compensation is not specifically fixed by statute, but he had the specific statutory right given him by the act of March 3, 1881. He exercised that right when he appointed Ryan an inspector, class 2, at $4 per diem. Ryan accepted the office under the terms of the appointment and he can not now be heard to repudiate that acceptance.

II.

Appellant's acceptance of the appointment tendered him with knowledge of the compensation he was to receive, and his continuance in the position for a long term of years without protest, precludes him from claiming an additional compensation.

Appellant was tendered an appointment in the customs service as an inspector, class 2, at $4 per diem, on April 9, 1910, to become effective on execution of the oath of office. He knew the terms of the offer and he accepted them. His execution of the oath as inspector, class 2, on April 16, 1910, evidenced his acceptance of the appointment. (*Glavey* v. *United States*, 185 U. S. 595, 604–5.)

The statutes authorizing the appointment of inspectors in the customs service have been construed by the Secretary of the Treasury whose duty it was and is to execute them. Construing the acts of December 16, 1902, *supra*, and March 4, 1909, *supra*, as permissive, in so far as they relate to the appointment of inspectors, the Secretary classified the inspectors into three classes with compensation at $4, $5, and $6 per diem, respectively. Appellant was, therefore, appointed as a *day inspector*, class 2, at $4 per diem. The fact that appellant was appointed an inspector, class 2, at $4 per diem, the compensation assigned by the Secretary to that class, shows that the Secretary construed the law as permissive, authorizing the Secretary to establish different salaries for the different classes of inspectors. That a long

and uniform construction given a statute by the department charged with its execution will be given great weight, and unless obviously erroneous, will not be disturbed by the courts, has become well established. (*Swift* v. *United States*, 105 U. S. 691, 695; *United States* v. *Graham*, 110 U. S. 219; *United States* v. *Tanner*, 147 U. S. 661; *United States* v. *Alger*, 152 U. S. 384, 397.)

Appellant accepted the appointment without protest. He made no demand for an increase of salary or for the additional compensation which he now claims rightfully belonged to the office. From April 16, 1910, the date of his acceptance, to October 10, 1919, the date of his promotion to inspector, class 4, at $5 per diem, he accepted the compensation tendered him without protest, and without complaint, thereby acquiescing in the interpretation given the law by the Secretary of the Treasury. On April 13, 1916, approximately six years after his original appointment, he first objected to the compensation paid him for the past six years and claimed that, notwithstanding he was appointed an inspector, class 2, at the understood compensation of $4 per day, and notwithstanding that he had accepted the appointment as made and received the pay attached thereto for a period of six years, he had been wrongfully and erroneously paid and that he should have been paid during all that time at the rate of $5 per day.

As well stated by the Court of Claims in this case (R. 21–22):

> During all of this period he had received the compensation which we are justified in assuming he had expected to receive and all that he expected to receive when he was appointed; and having been paid each month as inspectors are regularly paid he had, so far as appears, at no time asserted any right to compensation other than that received by him. The Supreme Court has declared itself very emphatically with reference to the effect of such conduct on the part of a Government employee. There are so many manifest reasons why a Government employee should not be permitted for a long period of time to receive without protest the compensation which it may be assumed that he and his appointing officer both deemed him entitled to receive and afterwards assert a claim for a large amount of accrued compensation that it is not deemed necessary to discuss them here. We refer to the case of *United States* v. *Garlinger* (169 U. S. 316), at 322 and cases cited. #

The decision of this court in *United States* v. *Garlinger* (169 U. S. 316, 322) is applicable to the facts in this case. In that case this court held:

> It is not found that the claimant himself ever demanded, during the period of his service, the compensation he now seeks. What he complained of was that after he had performed an all-night service he was not excused from duty the follow-

To the same effect, see the following cases decided by this Court in Nov.,1921:

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duties to be performed and the compensation which he would receive. He accepted the compensation for a period of six years without protest. The compensation for the office held by appellant had not been fixed by statute and was left to the discretion of the Secretary of the Treasury. The Secretary exercised his discretion by fixing the compensation at $4 per diem, and appellant accepted that compensation in full settlement of his services, not only at the time of his entrance into the service as inspector, but he evidenced his acceptance on every pay day when he received and receipted for his pay during the period for more than nine years during which he was employed as inspector, class 2. There being no statute clearly and absolutely fixing his compensation, his claim falls within the principle laid down by this court in *Chicago, Milwaukee and St. Paul Railway Company* v. *Clarke* (178 U. S. 353, 368–9), where the court said:

> Without analyzing the cases, it should be added that it has been frequently ruled by this court that a receipt in full must be regarded as an acquittance in bar of any further demand in the absence of any allegation and evidence that it was given in ignorance of its purport, or in circumstances constituting duress, fraud, or mistake. (*De Arnaud* v. *United States*, 151 U. S. 483; *United States* v. *Garlinger*, 169 U. S. 316, 322; *United States* v. *Adams*, 7 Wall. 463; *United States* v. *Child*, 12 Wall. 232; *United States* v. *Justice*, 14 Wall. 535; *Baker* v. *Nachtrieb.*, 19 How. 126.)

CONCLUSION.

The compensation to be paid inspectors at the time of their entrance upon duty was within the discretion of the Secretary of the Treasury. He exercised that discretion and designated a compensation of $4 per diem for inspectors of class 2. At no time during which appellant held the office of inspector, class 2, prior to the filing of his suit in the Court of Claims did he protest against the compensation paid him. A position of inspector, class 2, was tendered appellant and he accepted the same knowing the conditions attached thereto. He should not now be heard to repudiate his contract of employment or be allowed to maintain a suit for an additional compensation not fixed by the statute and not agreed to by the appointive power.

The judgment of the Court of Claims should be affirmed.

JAMES M. BECK,
Solicitor General.

ROBERT H. LOVETT,
Assistant Attorney General.

HARVEY B. COX,
Attorney.

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